

Honorable Richard A. Jones

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

Dallas Buyers Club, LLC,
Plaintiff

v.

DOES 1-10,
Defendants.

Case No. 2:14-cv-01336-RAJ

OPPOSITION TO MOTION FOR
LEAVE TO ISSUE SUBPOENAS

**OPPOSITION TO PLAINTIFF'S *EX PARTE* MOTION FOR LEAVE TO
ISSUE FRCP 45 SUBPOENAS TO NON-PARTIES**

COMES NOW, Defendant John Doe having I.P. Address **76.104.135.78**
(herein referred to as "Doe 7"), by and through counsel, and opposes Plaintiff
Dallas Buyers Club, LLC's ("DBC") *Ex Parte* Motion For Leave To Issue
FRCP 45 Subpoenas.

**DBC'S MOTION IS MERELY AN ATTEMPT TO
FURTHER HARASS INNOCENT INDIVIDUALS
WITH IMPUNITY**

This action was commenced by Complaint filed on August 28, 2014. It
has been roughly 166 days since the action was commenced. On September 2,

1 2014, DBC sought leave to serve limited third-party discovery ostensibly for
2 the purpose of identifying the defendants. That request was granted on
3 September 4, 2014, more than five months ago. DBC now admits it has all the
4 information it requested, yet it still has not named and served even one single
5 defendant.
6

7
8 As the Court is aware, Fed. R. Civ. P. 4(m) establishes that a plaintiff
9 has 120 days within which to serve a defendant once a complaint has been
10 filed. It has now been 166 days and DBC has all the information that it needs
11 to serve the defendants. But instead of doing so, DBC instead seeks to take
12 discovery of those individuals it refuses to name while denying those
13 individuals the right to take discovery of DBC.
14
15

16 That is not to say DBC has been unwilling to actually serve individuals
17 who deny liability based solely on their IP address. Indeed DBC did exactly
18 that in a sister case to the present one when it filed an Amended Complaint
19 on November 24, 2014 in *Dallas Buyers Club, LLC v. Does 1-10*, Case No. 14-
20 cv-01153, which is also before this Court, naming several individuals.
21
22

23 DBC was willing to simply amend and name subscribers in November
24 of 2014, but is unwilling to do so now. So the question becomes what changed
25 between November and now? The answer is Judge Rice's opinion in a related
26
27

1 case in Eastern Washington on January 9, 2015 in the case of *Elf-Man, LLC*
2 *v. Lamberson*, Case No. 2:13-CV-0395. In that case, Judge Rice awarded just
3 over \$100,000 in attorneys' fees against the plaintiff for advancing a nearly
4 identical claim against an innocent party.
5

6
7 One could argue that the *Elf-Man* case involved a different plaintiff
8 than the instant case. However, that argument is **specifically** why bi-lateral
9 discovery in the instant case is so necessary. To elaborate, the named
10 plaintiffs in *Elf-Man* and the instant case may be different. However, nearly
11 everything else about not only these two cases, but also a host of other cases
12 around the country, raises serious concerns regarding who is the real-party-
13 in-interest. For example, the *Elf-Man* case and the instant case were
14 purportedly brought by two independent parties, yet the purported
15 independent entities both relied on substantively-identical declarations of
16 someone named Daniel Macek. (Compare Dkt 7 in the instant action with Dkt
17 88 of the *Elf-Man* case, attached). Although that fact alone may only raise
18 eyebrows, others have encountered nothing except obstacles when attempting
19 to depose the mysterious Mr. Macek. See *Dallas Buyers Club, LLC v. iiNet*
20 *Limited*, Case No. NSD 1051 of 2014 (Federal Court Of Australia)(Australian
21 Federal Court ordered plaintiff to produce David Macek for deposition in
22
23
24
25
26
27

1 Australia after plaintiff refused to allow deposition of Mr. Macek)(copy
2 attached).

3 4 CONCLUSION

5 The instant motion is yet another example of DBC seeking to misuse
6 the power of the Court while avoiding any liability itself for its misdeeds. In
7 short, DBC seeks to further harass innocent individuals while hiding behind
8 the judge's robe. Doe 7 asks that the Court deny DBC's motion, and that DBC
9 be ordered to either name the individuals against which it intends to pursue
10 this matter immediately, or dismiss the action as to those individuals
11 pursuant to Fed. R. Civ. P. 4(m).

12
13
14 Dated: February 10, 2015

Respectfully submitted,

15
16 

17 John Whitaker
18 WHITAKER LAW GROUP
19 1218 Third Avenue, Suite 1809
20 Seattle, WA 98101
21 p: (206) 436-8500
22 f: (206) 694-2203
23 e: john@wlawgrp.com

Attorney for Doe 7

CERTIFICATE OF SERVICE

The undersigned attests that the foregoing document has been served
on all parties of record in the manner and on the date indicated below:

David A. Lowe
Lowe Graham Jones PLLC
701 Fifth Avenue, Suite 4800
Seattle, Washington 98104

- ☐ U.S. Mail
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☒ CM/ECF Notification
- ☐ Email (with approval)

DATED: February 10, 2015

/s/ John Whitaker
John Whitaker